

Montana Water Court
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FILED
04/20/2023
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CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0816-R-2022
Lambert, Kathryn
3.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Rudd Children Trust

CASE 43B-0816-R-2022
43B 12628-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following remark:

THE POINT OF DIVERSION MAY BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NESWNE SEC 01 TWP 02S RGE 14E SWEET GRASS COUNTY. SEE DNRC MEMORANDUM DATED 03/11/1987.

The issue remark was not addressed and resolved during the objection process. The Legislature has directed the Water Court to resolve the issue remarks using the procedures set forth in section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark. In this instance, the information in the claim file is sufficient to address and resolve the issue remark. In order to give the claimant an opportunity to file additional evidence if it so chose, an Order Consolidating Case And Setting Filing Deadline was issued on December 2, 2022 setting a February 2, 2023 filing deadline. Nothing was filed.

The February 7, 2023 Order Entering Default and Order Setting Deadline Pursuant To Section 85-2-248(9)(a), MCA states:

As Rudd Children Trust did not comply with the December 2, 2022 Order Consolidating Case And Setting Filing Deadline, pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., it is

ORDERED that the default of Rudd Children Trust is ENTERED.

This claim appeared in the Preliminary Decree with the following issue remark:

THE POINT OF DIVERSION MAY BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NESWNE SEC 01 TWP 02S RGE 14E SWEET GRASS COUNTY. SEE DNRC MEMORANDUM DATED 03/11/1987.

As this issue remark will not be addressed and resolved through the objection process, the Legislature has directed the Water Court to resolve issue remarks using the procedures set forth in section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. The Preliminary Decree states this is a LIVESTOCK DIRECT FROM SOURCE claim. Therefore, the point of diversion and place of use should be the same. It appears the point of diversion and the place of use legal descriptions should be amended to the NESWNE section 1, T2S, R14E, SWEET GRASS. Pursuant to 85-2-248(9)(a), MCA, it is

ORDERED that the deadline for the claimant to show cause in writing why the Court should not proceed with amending claim 43B 12628-00 as described above pursuant to section 85-2-248(9)(a), MCA, is **March 10, 2023**. If no additional information is filed by this deadline, the Court will proceed with amending the claim as detailed above.

Nothing was filed. The Orders are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDING OF FACT

The Preliminary Decree states that the point of diversion legal description is the SESWNE section 1, T2S, R14E, SWEET GRASS. The point of diversion legal description should be NESWNE section 1, T2S, R14E, SWEET GRASS. The issue remark should be removed as addressed and resolved.

CONCLUSION OF LAW

The information in the claim file is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (9), MCA.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Rudd Children Trust
Bonnie Fiechtner Trustee
4215 Hillcrest Rd
Billings, MT 59101

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 12628-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RUDD CHILDREN TRUST
BONNIE FIECHTNER TRUSTEE
4215 HILLCREST RD
BILLINGS, MT 59101 9333

Priority Date: JUNE 30, 1914

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF UPPER DEER CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	1	2S	14E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				1	2S	14E	SWEET GRASS